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Georgia Electric Utility Regulatory Research Guide

Melissa Oellerich

Georgia State University College of Law

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Georgia Electric Utility Regulatory Research Guide

Guide Information		Guide Index
Last Updated:	Nov 15, 2012	Home
Guide URL:	http://libguides.law.gsu.edu/georgiaenergyregulation	Primary Sources
Description:	This site provides information related to Georgia state regulatory matters and proceedings before the Georgia Public Service Commission.	Secondary Sources
Tags:	electric utilities , energy law , public utilities regulation , state energy regulation	Associations, Interest Groups and Helpful Resources
RSS:	Subscribe to Updates via RSS	Emerging Trends and Issues to Watch

Home

Overview
<p>Electric Public Utilities are corporations organized similar to and subject to the same laws and regulations as other corporations. However, because of their implications for the public health, safety and welfare and because they provide essential services they are closely regulated by the federal and state governments.</p> <p>Electric Public Utilities in Georgia are regulated at the federal level by the Federal Energy Regulatory Commission ("FERC") and if they have nuclear facilities, by the Nuclear Regulatory Commission ("NRC") both of which are part of the Department of Energy ("DOE"). FERC regulates transmission rates (transmission lines carry electricity across long-distances and often over the territory of more than one electric provider) wholesale power rates, mergers and acquisitions, and power plant operations. The NRC issues licenses to build and operate nuclear power sources and closely monitors the safe operation of nuclear power across the country.</p> <p>At the state level, public electric utilities are regulated by the Georgia Public Service Commission ("PSC"). The PSC has jurisdiction over both base and fuel rates charged directly to retail customers, the commissioning and decommissioning of new power sources in the state, and approval of a public utility's Integrated Resource Plan ("IRP") (a plan that details a company's projected customer needs over a long-term planning horizon and how the utility plans to meet those generation needs).</p> <p>The scope of this research guide is to address Georgia-specific regulatory matters affecting public electric utilities regulated by the Georgia Public Service Commission such as base and fuel rate increases, the certification of new power sources and the filing of a utility's IRP.</p>

Disclaimer
<p>This research guide is a starting point for a law student or an attorney to research the area of Georgia Public Electric Utility Regulation. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law Library or consult an attorney.</p>

About the Author
<p>Melissa Oellerich will graduate from Georgia State University College of Law in June, 2012. She has worked in the energy industry for ten years, where she currently holds the position of Corporate Secretary Coordinator at Georgia Power Company, a Southern Company subsidiary. Upon graduation, Melissa plans to join the Energy Practice Group at Troutman Sanders LLP where she will continue to support Georgia Power and other investor-owned electric utilities in energy regulatory matters.</p> <p>If you have any questions regarding this research guide, please contact Professor Meg Butler at mbutler@gsu.edu.</p>

[Back to Top](#)

Primary Sources

Constitutional Provisions

Energy law is based on three constitutional principles:

- The Commerce Clause, U.S. CONST. art. I, §8 cl. 3 (2012);
- The Supremacy Clause, U.S. CONST. art. VI, cl. 2.(2012); and
- The Takings Clause (Eminent Domain), U.S. CONST. amend. V (2012).

The Commerce Clause plays an important role in energy law because energy is produced within state boundaries but may be transmitted or sold to other states. Because Congress has the power to preempt state laws, the Supremacy Clause is important in establishing which energy activities are regulated by the state vs. the federal government. Finally, the Takings Clause is an important part of energy law because public utilities have authority to take property under Eminent Domain if doing so is in the best interest of the public. These Constitutional provisions and all other test of the United States Constitution with annotations (free resource) may be accessed at [Cornell Legal Information Institute](#).

U.S. Code

[U.S.C.S. - Energy and Utilities - Titles 15, 16, 30, 42 and 43](#)

These Code sections can be found free of charge at <http://thomas.loc.gov/home/thomas.php>

Regulations

The Department of Energy is the agency delegated power for regulating public utilities and electric infrastructure and generation in the United States. The following code sections are applicable to public utilities:

CFR Title 10 - Energy - Establishes the Department of Energy and Nuclear Regulatory Commission.

CFR Title 18 - Conservation of Power and Water Resources - this code section delineates the FERC Uniform System of Accounts, special accounting rules that all public utilities must comply with.

These regulations can be found free of charge at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Legislation

Georgia Statutes:

GA Code: Title 46 Public Utilities and Public Transportation -this Title deals with various statues affecting public utility companies. Lexis provides the GA code free of charge (see link at bottom of this box). Among the title can be found statutes dealing with the following topics:

Integrated Resource Plan Statute - O.C.G.A. 46-1A-3 through 11 - Requires a public utility to lay out its generation plan over a 20 year horizon detailing forecasted customer demand, how the utility plans to meet that demand, and what generation mix the utility will use (coal, gas, demand side management programs, etc.).

Rate Making Procedures - O.C.G.A 46-2-25 - details the procedure for a public utility to change its rates. Utilities are allowed to recover all prudently expended fuel costs from its customers through a fuel clause in a fuel case. In a base rate case, the Commission determines the appropriate return the utility may receive on its ratebase.

Nuclear Energy Financing Act - (passed in 2008) - O.C.G.A 46-2-25(c.1)(1) - (3) - allows a public utility to recover financing costs during the construction of a nuclear plant, before the plant is placed in service.

Georgia Territorial Electric Service Act of 1973 - O.C.G.A. 46-3-1 through 15. - this statute deals with territorial issues between public utilities and electric muncpal corporations as to geographic limitations on service territory.

Local Municipality Statutes:

[www.Municode.com](#) – (Free source of various municipalities' codes that may have their own rules regarding the transport of electricity through city limits. Typcially these laws allow the municipalities to collect a Municipal Franchise Fee (MFF) for allowing the public utility to build infrastructure within a municipality in order to transport power to its service territory.)

- Official Annotated Code of Georgia
<http://www.lexisnexis.com/hottopics/gacode/Default.asp>
Free Source Provided by Lexis

Case Law - Supreme Court

***Nebbia v. People of New York*, 291 U.S. 502, 54 S.Ct. 504 (1934)** - Court held that it is within the police powers of the state to regulated prices so long as the laws have a reasonable relationship to a proper legislative purpose (such as promoting the public welfare).

***Federal Power Commission v. Natural Gas Pipeline Co. of America*, 315 U.S. 575, 62 S.Ct. 736 (1942)**

***Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S.Ct. 281(1944)** - seminal case

***Federal Power Commission v. Southern California Edison Co.*, 376 U.S. 205, 84 S.Ct. 644 (1964)**; - Established jurisdictional authority between states (regulate retail electricity sales) and federal (regulate wholesale and interstate sales) regulators.

Case Law - Georgia

Zuber v. Southern Ry. Co., 9 Ga.App. 539, 71 S.E. 937, (Ga.App. 1911) - holding the PSC has those powers expressly, or by fair implication, delegated to it by the State legislature.

Georgia Public Service Commission v. Atlanta Gas Light Co., 205 Ga. 863, 55 S.E.2d 618 (Ga. 1949) - concisely summarizes the powers of the PSC over public utilities.

Allied Chemical Corp. V. Georgia Power Co., 236 Ga. 548, 224 S.E.2d 396 (Ga. 1976) - this case is one of the first examples of a recent trend of consumers challenging utility rates, versus the PSC as has traditionally been the case.

Georgia PSC Orders

- Georgia Public Service Commission Homepage
<http://www.psc.state.ga.us/>
The GPSC website contains a Docket search box where GPSC Orders can be accessed.
- How Does the Commission Decide a Rate Case
http://www.psc.state.ga.us/cases/deciding_a_rate_case.asp
One of the most important proceedings a public utility engages in is the Retail and Fuel rate cases. In a rate case, the Commission determines based on a utility's cost of service, how much a utility can charge its customers and how much return a company is allowed to earn. The company then uses the PSC order to allocate the costs among customer groups through various tariffs over a time period as ordered by the Commission, subject to certain restrictions. This link provides a good overview of the rate case process.

Georgia PSC Rules

[Utility rules of the Georgia Public Service Commission, effective January 1, 1976 : issued in accordance with provisions of the Administrative Procedure Act, as amended \(Section 3A-104 of the Code of Georgia, as amended\)](#)

- GPSC Rules and Regulations
http://rules.sos.state.ga.us/cgi-bin/page.cgi?g=GEORGIA_PUBLIC_SERVICE_COMMISSION/index.html&d=1
- Ex Parte Rules
<http://www.psc.state.ga.us/factsv2/Document.aspx?documentNumber=104939>
Docket 24838 - Adopted Ex Parte Communication Rules between the Commissioners and the parties to a proceeding in May 2008.

Georgia Administrative Procedure Act

- Georgia Administrative Procedure Act
http://sos.georgia.gov/administration/admin_proced_act.htm
Some exceptions specifically applicable to the Georgia Public Service Commission can be found in O.C.G.A. 50-13-17.

[Back to Top](#)

Secondary Sources

Law Journals

Some helpful articles available from the Energy Law Journal (free source - see link below:

[The Role of the States in Energy Regulation](#), Mike Anderson, 4 Energy L.J. 255, 1983.

[Who Makes the Rules? Federal and State Jurisdiction Over Electric Transmission Access](#), Isaac D. Benkin, 14 Energy L.J. 45, 1992.

- Energy Law Journal
<http://www.felj.org/journal.php#eljonline>
- The Energy Journal
<http://www.iaee.org/en/publications/journal.aspx>
Focuses on energy economics - helpful for cost of capital articles for rate case proceedings.

Treatises

Mathew Bender, Energy Law & Transactions. Available on Lexis. (Coverage: 2001 to date). Touted as the "Most Complete Treatise of its kind - the Industry Standard" by Lexis.

Industry News Sources

- SNL - Regulatory Research Analysis Reports
<http://www.snl.com/Sectors/Energy/ElectricPower.aspx>
- Public Utility Reports
<http://www.pur.com/urn.cfm>
Publishes Utility Regulatory News (URN) – the only weekly newsletter devoted to the regulation of public utilities at the state level).

Magazines

Two great magazine resources for current events in the electric industry:

Public Utilities Fortnightly - published by Public Utilities Reports, <http://www.fortnightly.com/>

Powermag - <http://www.powermag.com/>

Books

- Tomain and Cudahy's Energy Law in a Nutshell, 2d by Joseph P. Tomain; Richard D. Cudahy
ISBN: 0314271864
Publication Date: 2011-08-31
- Principles of Public Utility Rates by James C. Bonbright; Albert L. Danielson; David R. Kamerschen
ISBN: 0910325235
Publication Date: 1988-03-01
http://media.terry.uga.edu/documents/exec_ed/bonbright/principles_of_public_utility_rates.pdf PDF version reprinted with permission by Powell Goldstein is available via the University of Georgia Terry College website.
- Energy Utility Rate Setting by Lowell Alt
ISBN: 1411689593
Publication Date: 2007-03-01
- The States and Electric Utility Regulation by Alan Finder
Call Number: KF2125 .F55
- The Regulation of Public Utilities by Charles F. Phillips
ISBN: 9780910325455
Publication Date: 1993-08-01

Blogs

- Fortnightly Energy Blog
<http://blog.fortnightly.com/>
Produced by an author of the magazine, Fortnightly, this is a very credible source for current news in the electric utility industry and covers state-specific regulatory topics.

- Department of Energy Blog
<http://energy.gov/news-blog>

Computer Research

Environment and Energy Daily - Available on GSU Law Library under Databases; news source that tracks congressional actions affecting the Energy industry.

[Back to Top](#)

Associations, Interest Groups and Helpful Resources

Helpful Links

- Bonbright Conference
http://www.terry.uga.edu/exec_ed/bonbright/
- National Association of Regulatory Utility Commissioners
<http://www.naruc.org/commissions.cfm>
Hosts annual National Conference of Regulatory Attorneys
- Michigan State University Institute of Public Utilities Regulatory Research and Education
<http://ipu.msu.edu/>
- Utility Connection
<http://www.utilityconnection.com/page5.asp>
- Edison Electric Institute
<http://www.eei.org/Pages/default.aspx>
- Public Utility Home Page
<http://www.publicutilityhome.com/>
- Electric Power Research Institute
<http://my.epri.com/portal/server.pt?>

Georgia Intervenor Groups

These groups commonly intervene in utility ratemaking and various other proceedings before the Georgia Public Service Commission as interested parties.

- Southern Alliance for Clean Energy
<http://www.cleanenergy.org/>
- Macys Inc.
<http://www.macysinc.com/>
Formerly known as Federated Department Stores
- Georgia Association of Manufacturers
<http://www.gamfg.org/>
- Georgia Environmental Finance Authority
<http://www.gefa.org/>
- Georgia Municipal Association
<http://www.gmanet.com/>
- Georgia Traditional Manufacturers Association
<http://www.gtma.org/>
- Georgia Watch
<http://www.georgiawatch.org/>
- U.S. Department of Defense
<http://www.defense.gov/>
Also represents other affected Federal Executive Agencies in proceedings.
- Resource Supply Management
<http://www.rsmenergy.com/>
- KGenPower Management, Inc.
<http://www.kgenpower.com/>

MARTA
<http://www.itsmarta.com/>
MARTA has its own unique tariff.

- The Kroger Company
<http://www.kroger.com/Pages/default.aspx>
- AARP
<http://www.aarp.org/>
Protects interests of retirees.

Professional Associations

- ABA Section of Public Utilities, Communication and Transportation
http://www.americanbar.org/groups/public_utility.html
- ABA Administrative Law and Regulatory Practice Section
http://www.americanbar.org/groups/administrative_law.html
- State Bar of Georgia Administrative Law Section
<https://www.members.gabar.org/custom/committees/Default.aspx?q=SECT>
- Energy Bar Association
<http://www.eba-net.org/>

Consultants/Expert Witnesses

- List of Energy Consultants
<http://www.wutc.wa.gov/webdocs.nsf/de53b07997d108ea882563b50072c5b3/97e68c3c68aeb33888256483006128b2!OpenDocument>

[Back to Top](#)

Emerging Trends and Issues to Watch

Georgia News

Both of the following topics have been making headlines in Georgia in 2012 and bills were introduced in the Georgia General Assembly concerning these items (not passed):

- 1) Solar Energy - public utilities are being criticized for not taking a more pro-active approach in alternative, cleaner energy forms. Solar energy has been in the news recently as many individuals in Georgia are putting up solar panels and marketing the energy to local businesses. Utilities are countering that this is a violation of the Georgia Territorial Act and that solar energy, on a large-scale is cost prohibitive for their customers at this point in time and is not a reliable source of energy at this point in time. Many utilities are currently researching solar energy panel technology to add to their generation mix.
- 2) Smart Meters (Advanced Metering Infrastructure) - some consumers are concerned that the new AMI meters may violate their privacy by collecting information about their usage. Utilities counter that the meters are provided solely to save administrative costs from reduced personnel needs and that readings are taken only once per day. However, many consumers would like an opt-out choice and have petitioned their legislators to consider this alternative.

Federal Laws and Regulations

Environmental:

The following federal environmental laws and regulations are having an enormous impact on electric utilities as they must determine whether to invest in environmental controls for existing plants or shut some plants down and replace with new forms of generation or purchased power.

- The Clean Air Act
- Clean Air Mercury Rule
- Clean Air Interstate Rule
- EPA National Emission Standards: Hazardous Air Pollutant (HAP) and Electric Generation Unit (EGU) Maximum Achievable Control Technology (MACT) Standards - regulates emissions from coal and oil fired power plants. In an effort to reduce pollution, the EPA is releasing new generation emission restrictions and tightening the emission restrictions. In order to comply, many utilities will need to install environmental controls and/or close some power plants. Many utilities have argued that they will not be able to comply by the proposed deadlines due to craft

labor shortages and rate shock to customers. (3 years to comply starting April 16, 2015).

- 316(b) - Water Intake Systems - to minimize harm to aquatic life (forthcoming).

Nuclear

- NRC Rules - post-Fukushima reviews may have implications for some of the existing nuclear fleet of electric utilities as more safety related design changes are mandated. Also, public opinion regarding nuclear power is an issue post-Fukushima and some nations have decided to discontinue nuclear energy altogether (Germany) while others are scaling back their nuclear programs (France - where nuclear energy accounts for more than 70% of its energy portfolio).

[Back to Top](#)

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